

Issue: Qualification/Work Conditions/Physical-Environmental, OSHA, Safety, Security;
Ruling Date: December 7, 2001; Ruling #2001-214; Agency: Department of Corrections;
Outcome: Not qualified



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2001-214
December 7, 2001

The grievant has requested a ruling on whether his grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that by removing an electric stove from the power plant, agency management misapplied policy. As relief, the grievant wants DOC to “provide the policy covering this or a decent, hot meal for all employees 24 hours a day 7 days per week.” For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant is employed as a Utility Plant Operator 2. On August 9, 2001, he reviewed an e-mail sent by the Warden to his supervisor stating that the electric stove would need to be removed for sanitation and safety reasons. On August 13, 2001, he filed a grievance stating that the stove was for personal and not commercial use so the standards used did not apply.

DISCUSSION

Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management’s attention, only certain issues qualify for hearing.¹ Claims relating to issues such as the methods, means and personnel by which work activities are carried out generally do not qualify for hearing unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state policy may have been misapplied.

In this case, the grievant alleges that management has misapplied “state policy” by removing the stove. Importantly, however, the term “state policy,” as used in the grievance statutes and procedure, refers to state *personnel* policy.² This grievance offers no evidence that state *personnel* policy was misapplied through the removal of the stove. Indeed, management’s removal of the stove from the work site would appear to be an

¹ Va. Code § 2.2-3004 (A).

² Va. Code § 2.2-3004 (A)(ii).

exercise of its responsibility to manage the operations of state government³ by complying with established health and fire regulations, which is an exercise of business judgement not subject to review by a hearing officer.⁴

APPEAL RIGHTS AND OTHER INFORMATION

The enclosed sheet contains information regarding the actions the grievant may take as a result of this ruling. If the grievant wishes to appeal this determination to the circuit court, he must notify the Human Resources Office, in writing, within five workdays of receipt of this ruling. If the court should qualify the grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant should notify them that he does not want to proceed.

Neil A.G. McPhie, Esquire
Director

Deborah M. Amatulli
Employment Relations Consultant

³ Va. Code § 2.2-3004 (B).

⁴ Specifically, the Virginia Department of Health Sanitation Code and the 1996 International Mechanical Code, Sections 507 and Section 509. See attachments to Second Step Response. Although the grievant asserts that the regulations do not apply to an electric stove used only by employees in the power plant, management asserts that an internal sanitation inspector and the local Fire Marshall have taken a contrary position.